

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
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FINDING OF NO SIGNIFICANT IMPACT

ISSUANCE OF AN ENDANGERED SPECIES

SECTION 10(a)(1)(A) PERMIT FOR THE ENHANCEMENT OF SURVIVAL
OF THE GILA TOPMINNOW (*Poeciliopsis occidentalis*), YAQUI TOPMINNOW (*P.
sonoriensis*), DESERT PUPFISH (*Cyprinodon macularius*), AND QUITOBAQUITO
PUPFISH (*C. m. eremus*) DURING IMPLEMENTATION OF THE ARIZONA GAME
AND FISH DEPARTMENT SAFE HARBOR IN ARIZONA

The U.S. Fish and Wildlife Service (Service) prepared a biological opinion and associated National Environmental Policy Act (NEPA) documents for the issuance of a Section 10(a)(1)(A) Safe Harbor permit to Arizona Game and Fish Department (Department) for the enhancement of survival of the desert pupfish, Yaqui topminnow, Quitobaquito pupfish, and Gila topminnow in Arizona. The Service has prepared an Environmental Assessment (EA) for approval of a Safe Harbor Agreement (Agreement) for the issuance of an enhancement of survival permit under Section 10(a)(1)(A) of the Endangered Species Act (Act), as amended (16 USC §1531-1544).

Proposed Action

The proposed action is the approval of the Agreement and the issuance of a section 10(a)(1)(A) enhancement of survival permit for the Quitobaquito pupfish, desert pupfish, Yaqui topminnow, and Gila topminnow. This alternative is intended to contribute to the conservation and recovery of all four species. However, some future incidental take of topminnow and pupfish is anticipated to occur through implementation of this Agreement and providing assurances that landowners may return their property to the baseline condition.

Under this Agreement, the Department would be able to provide incidental take coverage to non-Federal landowners who voluntarily agree to enhance or create new topminnow and pupfish habitat, protect existing habitat, or allow a topminnow and pupfish population to be reestablished on their lands. In addition, neighboring landowners can seek coverage under the Agreement against new regulatory restrictions should fish move onto their property as a result of recovery activities. If fish could move from a property, and downstream landowners do not sign a Certificate of Inclusion, that site may not be used. These regulatory assurances only cover topminnow and pupfish and habitat that are not part of an enrolled property's existing baseline condition.

Participation in the Agreement is entirely voluntary. Regulations require that baseline surveys be performed, an agreement be signed by the landowner, reasonable notification be given of any activity that may result in take of the covered species, and access be granted to minimize any take of the covered species. In addition, the Agreement has conservation measures for all participants to reduce ongoing affects.

The duration of most individual landowner enrollments in the Agreement will be a minimum of 10 years, but could be for the duration of the permit (50 years). The Agreement allows landowners to opt out of their conservation commitments early; however, their assurances from the Agreement also end at that time.

Alternatives Considered

No Action Alternative

In the No Action Alternative, we would not approve the programmatic Safe Harbor Agreement for topminnow and pupfish in Arizona or issue the associated section 10(a)(1)(A) Enhancement of Survival permit. Therefore, a coordinated effort to recover topminnow and pupfish on non-Federal properties using a single programmatic Enhancement of Survival permit and Safe Harbor Agreement would not occur. Individual landowners or regional organizations could still develop individual Safe Harbor Agreements or Habitat Conservation Plans. There would be little to no incentive for landowners to manage sites for the benefit of native aquatic species. Furthermore, there would be no need to notify us or the Department of the activities that may impact topminnow and pupfish. Recovery efforts for this species would primarily occur on Federal lands, with minor participation of non-Federal land owners. The no action alternative provides the baseline for comparison of environmental effects of the preferred alternative.

Public Comment

The draft Safe Harbor Agreement for topminnow and pupfish in Arizona and its draft Environmental Assessment were made available for public review and comment on March 25, 2004 (FR 69 15362). The public review period closed on April 26, 2004. The Service received three letters that addressed the Agreement, and one of these letters also provided comments on the draft Environmental Assessment. There were several substantive comments. There were comments on the application of recovery plan guidance, notification of adjacent landowners and local jurisdictions, how small sites should be treated, the impacts of mosquitofish, replacing mandatory conservation actions with voluntary ones, and movement of fish after their release. A news release was mailed to news outlets in southern Arizona. The news release and the draft EA and Agreement were also posted on our website (<http://www.fws.gov/southwest/ed/arizona>) where the Service requested comments.

The Service addressed the comments in these letters in the final EA. The comments did not identify any significant new environmental impacts not addressed in the draft EA;

however, the letters provided information that improved the final EA and details of implementing the proposed action.

This FONSI with its attached EA will be available on the Service's website, and all who received or commented on the draft EA will receive notice of this decision and where it can be accessed.

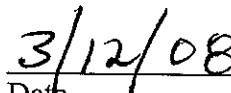
Determination

Based upon information contained in the final EA and supporting data in our files, the Service has determined that this action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of NEPA. Specifically, although effects to listed, proposed, and candidate species; vegetation; wildlife; cultural resources; wetlands; and water resources are identified in the EA, effects are minor and may be beneficial. This action is not an action that normally requires preparation of an Environmental Impact Statement (EIS) and is not similar to such actions. Accordingly, preparation of an EIS on the proposed action is not warranted.

The preferred alternative provides for a coordinated approach to the recovery of topminnow and pupfish on non-Federal properties, providing a menu of conservation measures for Participating Landowners to enhance or create new habitat, protect existing habitat, or allow a population to be reestablished on their lands. In return, Participating Landowners receive assurances that their positive actions will not result in future regulatory restrictions beyond current conditions. It also provides an avenue for Neighboring Landowners to receive assurances should fish move onto their property as a result of recovery actions on a Participating Landowner's property.

It is my decision to issue the section 10(a)(1)(A) permit for the enhancement of survival for the enhancement of survival for the desert pupfish, Yaqui topminnow, Quitobaquito pupfish, and Gila topminnow in Arizona.

Acting 
Deputy Regional Director


Date